

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FIKRI BAYRAMOGLU,

No C-07-4374 VRW (PR)

Petitioner,

v

ORDER DENYING PETITION FOR WRIT  
OF HABEAS CORPUS

BEN CURRY, Warden

Respondent.

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Pro se petitioner Fikri Bayramoglu, a state prisoner currently incarcerated at Chuckawalla Valley State Prison in Blythe, California, seeks a writ of habeas corpus under 28 USC § 2254 challenging the California Board of Parole Hearings' ("BPH") October 25, 2006 decision to deny him parole.

Per order filed on January 10, 2008, the court found petitioner's claim that BPH violated his due process rights, when liberally construed, colorable under § 2254, and ordered respondent to show cause why a writ of habeas corpus should not be granted. Doc #8. Respondent has filed an answer and petitioner has filed a traverse. Doc ## 11 & 12.

I

On April 17, 1980, petitioner shot Tracy Lee Jones several times and killed her. Doc #11-1 at 15. He also stabbed himself several times with a knife and was taken to a hospital. Id at 15-16. While in the ambulance petitioner stated: "I killed my girlfriend. Please let me die." Id at 16.

On October 5, 1982, petitioner was sentenced to fifteen years to life in state prison following his conviction by jury of second degree murder. Doc #11-1 at 2-3.

On October 25, 2006, petitioner appeared before BPH for his sixth subsequent parole suitability hearing. Doc #11-1 at 5 & 19. At that hearing, BPH found petitioner was "not suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison." Id at 35. BPH cited multiple reasons to support its decision, including: (1) the calculated and "especially cruel and callous" nature of the crime; (2) the inexplicable motive for the crime in relation to the offense; (3) petitioner's failure to "develop a marketable skill which could be put to use upon release"; (4) petitioner's failure to participate sufficiently in self-help and "demonstrate positive evidence of change"; (5) petitioner's extensive disciplinary problems while incarcerated; (6) petitioner's failure to "assum[e] responsibility in a truly remorseful way"; (7) petitioner's unfavorable psychological report indicating his "above-average risk for violence"; and (8) petitioner's lack of adequate parole plans. Id at 35-38. Petitioner's parole was deferred for four years. Id



1 2254(d). Under this deferential standard, federal habeas relief  
2 will not be granted "simply because [this] court concludes in its  
3 independent judgment that the relevant state-court decision applied  
4 clearly established federal law erroneously or incorrectly. Rather,  
5 that application must also be unreasonable." Williams v Taylor, 529  
6 US 362, 411 (2000).

7 While circuit law may provide persuasive authority in  
8 determining whether the state court unreasonably applied Supreme  
9 Court precedent, the only definitive source of clearly established  
10 federal law under 28 USC § 2254(d) rests in the holdings (as opposed  
11 to the dicta) of the Supreme Court as of the time of the state court  
12 decision. Williams, 529 US at 412; Clark v Murphy, 331 F3d 1062,  
13 1069 (9th Cir 2003).

14 Where the state court gives no reasoned explanation of its  
15 decision regarding a petitioner's federal claim, the federal court  
16 should conduct "an independent review of the record" to determine  
17 whether the state court's decision was an objectively unreasonable  
18 application of clearly established federal law. Plascencia v  
19 Alameida, 467 F3d 1190, 1198 (9th Cir 2006); Himes v Thompson, 336  
20 F3d 848, 853 (9th Cir 2003); Delgado v Lewis, 223 F3d 976, 981-82  
21 (9th Cir 2000). "[W]hile we are not required to defer to a state  
22 court's decision when that court gives us nothing to defer to, we  
23 must still focus primarily on Supreme Court cases in deciding  
24 whether the state court's resolution of the case constituted an  
25 unreasonable application of clearly established federal law."  
26 Fisher v Roe, 263 F3d 906, 914 (9th Cir 2001), overruled on other  
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1 grounds by Payton v Woodford, 346 F3d 1204, 1217 n18 (9th Cir 2003).

3 III

4 Petitioner seeks federal habeas corpus relief from BPH's  
5 October 25, 2006 decision finding him unsuitable for parole and  
6 denying him a subsequent hearing for four years on the ground the  
7 decision does not comport with due process. Liberally construed,  
8 petitioner's argument is that the decision was supported by "no  
9 evidence that [he] would pose unreasonable risk of danger to  
10 society." Doc #1 at 6.

12 A

13 Under California law, prisoners serving indeterminate life  
14 sentences, like petitioner, become eligible for parole after serving  
15 minimum terms of confinement required by statute. In re Dannenberg,  
16 34 Cal 4th 1061, 1069-70 (2005). At that point, California's parole  
17 scheme provides that the parole board "shall set a release date  
18 unless it determines that the gravity of the current convicted  
19 offense or offenses, or the timing and gravity of current or past  
20 convicted offense or offenses, is such that consideration of the  
21 public safety requires a more lengthy period of incarceration." Cal  
22 Penal Code § 3041(b). Regardless of the length of the time served,  
23 "a life prisoner shall be found unsuitable for and denied parole if  
24 in the judgment of the panel the prisoner will pose an unreasonable  
25 risk of danger to society if released from prison." Cal Code Regs  
26 tit 15, § 2402(a). In making this determination the parole board

1 must consider various factors including the prisoner's base and  
2 other commitment offenses, social history, past criminal history,  
3 past and present mental state and attitude toward the crime. See  
4 Cal Code Regs tit 15, § 2402(b)-(d).

5 California's parole scheme "gives rise to a cognizable  
6 liberty interest in release on parole" that cannot be denied without  
7 adequate procedural due process protections." Sass v California Bd  
8 of Prison Terms, 461 F3d 1123, 1127 (9th Cir 2006), quoting  
9 McQuillion v Duncan, 306 F3d 895, 902 (9th Cir 2002). It matters  
10 not that a parole release date has not been set for the inmate  
11 because "[t]he liberty interest is created, not upon the grant of a  
12 parole date, but upon the incarceration of the inmate." Biggs v  
13 Terhune, 334 F3d 910, 914-15 (9th Cir 2003).

14 Petitioner's due process rights require that "some  
15 evidence" support the board's decision finding him unsuitable for  
16 parole. Sass, 461 F3d at 1128. This "some evidence" standard is  
17 deferential, but ensures that "the record is not so devoid of  
18 evidence that the findings of [the board] were without support or  
19 otherwise arbitrary." Superintendent v Hill, 472 US 445, 457  
20 (1985). Determining whether this requirement is satisfied "does not  
21 require examination of the entire record, independent assessment of  
22 the credibility of witnesses, or weighing of the evidence." Id at  
23 455. Rather, "the relevant question is whether there is any  
24 evidence in the record that could support the conclusion reached."  
25 Id at 455-56.

26 Due process also requires that the evidence underlying the  
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1 parole board's decision have some indicium of reliability. Biggs,  
2 334 F3d at 915; McQuillion, 306 F3d at 904. Relevant to this  
3 inquiry is whether the prisoner was afforded an opportunity to  
4 appear before, and present evidence to, the board. See Pedro v  
5 Oregon Parole Bd, 825 F2d 1396, 1399 (9th Cir 1987). If the board's  
6 determination of parole unsuitability is to satisfy due process,  
7 there must be some reliable evidence to support the decision. Rosas  
8 v Nielsen, 428 F3d 1229, 1232 (9th Cir 2005).

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10 B

11 Petitioner claims BPH's finding that he was unsuitable for  
12 parole violated his due process rights because this finding was  
13 supported by "no evidence that [he] would pose unreasonable risk of  
14 danger to society." Doc #1 at 6. Petitioner is mistaken.

15 The record shows that although BPH afforded petitioner and  
16 his counsel an opportunity to speak and present petitioner's case at  
17 the hearing, petitioner refused to attend the hearing or to assist  
18 his attorney in presenting his case. Doc #11-1 at 8-10 & 32-33.  
19 The record also shows that BPH gave petitioner and his counsel time  
20 to review relevant documents and provided petitioner with a reasoned  
21 decision in denying parole. Id at 10-14 & 35-41. Additionally, the  
22 record shows BPH relied on several circumstances tending to show  
23 unsuitability for parole and that these circumstances formed the  
24 basis for its conclusion that petitioner posed "an unreasonable risk  
25 of danger to society or a threat to public safety if released from  
26 prison." Id at 35; see Cal Code Regs tit 15, § 2402(a) (stating a  
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1 prisoner determined to be an unreasonable risk to society shall be  
2 denied parole).

3 First, BPH found the commitment offense was carried out in  
4 a "calculated" and "especially cruel and callous manner" and "the  
5 motive for the crime was inexplicable in relation to the offense."  
6 Doc #11-1 at 35; see Cal Code Regs tit 15, § 2402(c)(1) (listing  
7 "exceptionally callous disregard for human suffering,"  
8 "dispassionate and calculated manner" of offense and "inexplicable  
9 or very trivial" motive in relation to the offense as factors  
10 tending to show unsuitability for parole). These conclusions were  
11 "drawn from the Statement of Facts wherein the prisoner \* \* \* armed  
12 himself and shot and killed the victim who was not armed and  
13 presented no threat to [him]." Doc #11-1 at 35-36.

14 Second, BPH found petitioner "failed to develop a  
15 marketable skill which could be put to use upon release" and "[did]  
16 not have viable residential plans and \* \* \* [did] not have  
17 employment plans." Doc #11-1 at 36-38; see Cal Code Regs tit 15,  
18 § 2402(d)(8) (listing "realistic plans for release" and  
19 "develop[ment of] marketable skills" as factors tending to show  
20 suitability for parole). BPH noted petitioner wished to return to  
21 his home country of Turkey, but "[did] not have support letters"  
22 stating how he would accomplish this. Doc #11-1 at 38; see also id  
23 at 40.

24 Third, BPH found petitioner had "not sufficiently  
25 participated in self-help," "failed to demonstrate positive evidence  
26 of change" and had extensive disciplinary problems while  
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1 incarcerated. Doc #11-1 at 36; see Cal Code Regs tit 15,  
2 § 2402(c)(6) (listing "serious misconduct in prison or jail" as a  
3 factor tending to show unsuitability for parole). Since the  
4 beginning of his incarceration through the time of the hearing,  
5 petitioner had accrued thirteen serious disciplinary infractions,  
6 with the most recent occurring in June 2002. Doc #11-1 at 36. In  
7 the same time period petitioner also accrued thirteen "counseling  
8 chronos" due to behavior problems. Id.

9 Finally, BPH observed that petitioner's most recent  
10 psychological evaluation stated that he had not "assum[ed]  
11 responsibility [for the crime] in a truly remorseful way" and that  
12 he presented an "above-average risk for violence." Doc #11-1 at 37;  
13 see also Doc #11-2 at 21. The evaluation notes petitioner "does not  
14 talk about the victim; he talks about himself. \* \* \* [He] states  
15 that he is sorry about this happening, but he also doesn't see how  
16 his behavior or his issues played a part." Id at 36-37; see also  
17 Doc #11-2 at 20-21. In discussing petitioner's risk assessment, the  
18 evaluation states that "things appear to happen around this inmate  
19 quite frequently," noting petitioner is assigned to a single cell  
20 "because he does not do well living with a cellmate." Id at 37; see  
21 also Doc #11-2 at 21.

22 The state superior court denied petitioner's habeas corpus  
23 petition but only addressed petitioner's claim that he should be  
24 transferred to Turkey, calling the claim "absurd"; the court did not  
25 discuss BPH's decision to deny parole. Doc #11-5 at 2. The state  
26 supreme court summarily denied his petition for review. Id at 12.

1 Because no state court has addressed the merits of petitioner's  
2 federal due process claim in a reasoned opinion, this court must  
3 conduct an independent review of the record to determine whether the  
4 state court's denial of habeas relief was an objectively  
5 unreasonable application of clearly established federal law. See  
6 Plascencia, 467 F3d at 1198. As stated earlier, due process  
7 requires that the BPH decision to deny parole be supported by "some  
8 evidence." See Sass, 461 F3d at 1128.

9 On this record, this court finds the state courts'  
10 rejection of petitioner's due process claim was not contrary to, nor  
11 did it involve an unreasonable application of, clearly established  
12 federal law, and it was not based on an unreasonable determination  
13 of the facts. See 28 USC § 2254(d); Plascencia, 467 F3d at 1198.

14 The record shows BPH had some reliable evidence to support  
15 its finding that petitioner was not suitable for parole because he  
16 would pose an unreasonable risk of danger to society or a threat to  
17 public safety if released from prison. First, petitioner's shooting  
18 of an unarmed woman who presented no threat to him was especially  
19 cruel and callous. Doc #11-1 at 35-36. Second, petitioner's  
20 disciplinary record demonstrated a pattern of hostility,  
21 confrontation and inability to follow institutional rules. Doc #11-  
22 2 at 14-15. Finally, Petitioner's most recent psychological  
23 evaluation assessed his risk for violence as "higher than the  
24 average citizen." Doc #11-2 at 21.

25 Because BPH's determination that petitioner was unsuitable  
26 for parole and would pose an unreasonable risk of danger to society  
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1 if released is supported by "some evidence," petitioner's due  
2 process rights have not been violated. Sass, 461 F3d at 1128; see,  
3 for example, Irons v Carey, 505 F3d 846, 850 (9th Cir 2007)  
4 (upholding denial of parole based solely on gravity of offense).

6 IV

7 For the reasons set forth above, the petition for a writ  
8 of habeas corpus is DENIED.

9 The clerk shall enter judgment in favor of respondent and  
10 close the file.

13 IT IS SO ORDERED.

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17 VAUGHN R WALKER  
18 United States District Chief Judge  
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